

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
07/05/2001

\*\*\* FILED \*\*\*  
07/11/2001  
CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2000-000357  
Docket Code 512

FILED: \_\_\_\_\_

STATE OF ARIZONA  
v.  
E TUCKER HORNE

THOMAS S ZIA

RICHARD D GIERLOFF

DISPOSITION CLERK-CCC  
REMAND DESK CR-CCC  
VICTIM WITNESS DIV-CA-CCC  
WEST MESA JUSTICE COURT

MINUTE ENTRY

WEST MESA JUSTICE COURT  
Cit. No. #1630723  
Charge: A. DUI  
DOB: 11/26/50  
DOC: 09/06/99

This Court has jurisdiction of this misdemeanor criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case was submitted to the Court without oral argument and the Court has considered and reviewed the record of the proceedings from the West Mesa Justice Court, and the Memoranda of counsel.

Appellant was charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1), and False Information to a Police Officer, a class 1 misdemeanor in violation of A.R.S. Section 13-2907.01. A jury trial proceeded in the West Mesa Justice of the Peace Court on May 5, 2000. A directed judgment of acquittal was entered on the False Information charge, but Appellant was found guilty of the Driving While Under the Influence of Intoxicating Liquor charge. On May 5, 2000, the record is unclear regarding the sentence imposed. The Court indicated its intention to order 10 days jail, with nine days suspended pending completion of an alcohol screening within 30 days and a fine of \$443.00, plus \$20.00 for

time payments. It does not appear from the record that the sentence was actually imposed. Judge Goodman granted defense counsel's request for a stay of sentence pending appeal.

First, Appellant claims that his sixth amendment rights were violated in the trial court's refusal to allow cross-examination of the arresting officer regarding an incident that occurred immediately after Appellant's arrest while the officer was transporting Appellant to jail. Apparently, the police officer ran a red light and the relationship between Appellant and the police officer degenerated after Appellant commented upon the red light violation. Appellant claims that, contrary to the trial court's ruling, such evidence was relevant to show the police officer's bias and prejudice during his testimony. The trial court disagreed. The standard for review which this Court must utilize in assessing error was whether the trial court abused its discretion. In this case the exclusion of relevant evidence was an abuse of discretion. The right of confrontation and cross examination as to bias and prejudice is an important right guaranteed to Appellant.

This Court's analysis is not complete without considering whether the error, substantial as it was, could be considered harmless error. The Arizona Supreme Court has previously defined fundamental error as an error that "reaches the foundation of the case or takes from the Defendant a right essential to his defense, or is an error of such dimensions that it cannot be said it is possible for a Defendant to have had a fair trial." *State v. King*, 158 Ariz. 419, 424, 763 P.2d, 239, 244 (1988). "And, where there is substantial evidence in the record which will support the verdict and it can be said that the error did not contribute significantly to the verdict, beyond a reasonable doubt, reversal is not required." *State v. Gallegos*, 178 Ariz. 1, 11, 870 P.2d 1097, 1107, cert.denied, 115 S.Ct. 330, 513 U.S. 934, 130 L.Ed.2d 289, appeal after remand, 185 Ariz. 340, 916 P.2d 1056, cert.denied 117 S.Ct. 489, 519 U.S. 996, 136 L.Ed.2d 382(1994), citing *State v. Thomas*, 130 Ariz. 432, 436, 636 P.2d 1214, 1218 (1981). The record in this case does not contain strong indicia of guilt from which the Court could conclude, beyond a reasonable doubt, that the failure of the trial court to allow impeachment evidence concerning the primary State's witness' bias and prejudice did not significantly contribute to the jury's verdict.

THEREFORE this Court will reverse and remand for a new trial.

For the reasons that this Court concluded that a new trial is warranted,

IT IS ORDERED reversing the judgment and sentence of the trial court and remanding this matter back to the West Mesa Justice Court for a new trial.